IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.396 OF 2007

Riyaz Khan Bashir Khan Pathan ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Shri Ganesh Gole, adv. for the Applicant.
Smt.S.V.Gajare, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 16th March, 2007.

P.C.:

1. Rule.

2. Rule made returnable forthwith. By consent of the parties, matter is taken up for final hearing.

3. Heard Mr.Gole, the learned counsel for the Applicant and Ms.Gajare, the learned APP for the State.

4. The applicant is a accused in Sessions Case No.404 of 2006 for the offence punishable under Section 302 read with Section 34 of the I.P.C. It appears that the report of first information was lodged by P.W.1 Sugrabi, who is mother of the deceased Nadeem. In the examination-in-chief during her evidence she deposed that "Shahrukh and Riyaz caught hold of my deceased son and Nazim stabbed my son with sura on his stomach". The

witness was cross-examined at length. Later on, on behalf of the accused, an application was made to recall P.W.1 under Section 311 of the Cr.P.C. contending that in the F.I.R. lodged by the witness, she had not stated "Shahrukh and Riyaz caught hold of my deceased son and Nazim stabbed my son with sura on his stomach". It was contended that due to some omission on the part of an advocate, this important improvement was not put to her in the cross-examination and for this purpose only, the witness was required to be recalled. Application was opposed and after hearing the learned Additional Sessions judge rejected the application. It appears that the F.I.R. reveals Nazim had stabbed Nadim but the part of the sentence showing that Shahrukh and Riyaz had caught hold of her son was not in the F.I.R. and this appears to be important and material improvement. Two accused persons namely, Shahrukh and Riyaz may be held guilty for the offence punishable under Section 302 read with Section 34 of the I.P.C. if this part of the sentence goes on record unchallenged. The learned Additional Sessions Judge committed error in rejecting application. He should have allowed the application in the interest of justice. Ms.Gajare also concedes to this extent but she states that if the witness is recalled, cross-examination should be restricted to this part of the sentence only. Mr.Gole, the learned counsel

for the applicant makes a statement that cross-examination will be limited to this part as the witness is already cross-examined at length.

5. In view of the above stated circumstances, application is allowed.

6. The learned Trial Court is hereby directed to recall P.W.1 and give opportunity to the accused to cross-examine her to the extent of the part referred in her examination-in-chief.

7. Rule is made absolute.

(J.H.Bhatia,J.)